IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1111 OF 2004

Maharashtra State Electricity
Board (O & M) Division, Satara ..Appellant

versus

Amber Dyes & Chemicals ..Respondents

Ms. A.R.S. Baxi for the Appellant.
Mr. U. Warunjikar for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 20TH JULY,2005

ORAL ORDER :

1. Heard.

2. This Appeal is filed by the original Plaintiff. They had filed a suit for recovering a sum of Rs.2,64,941.95 paise as arrears of the electricity charges. That suit was dismissed by the Civil Judge, Senior Division, Satara, and hence this Appeal.

3. It is the case of the plaintiff that defendant is a consumer of the plaintiff. It has

electric connection No. 190560050392. The meter was installed in December 1993 and as the meter was not connected to the computer, there is no correct reading. Bills for minimum charges were issued to the defendant. Those bills were paid. But later on bills for actual consumption were issued. They were not paid and hence the plaintiff was required to file the suit.

4. The suit was opposed by the defendant. It was defendant's contention that whatever bills were issued by the Plaintiff, the defendant paid the same. There was no lapse on the part of the defendant and the actual consumption for which the bills are now sent was in respect of a meter not installed in the factory of the defendant. The sanctioned load of the defendant's factory was 54 H.P. but it was wrongly mentioned as 59 H.P. and the bills do not tally. The trial court after recording the evidence gave findings against the plaintiff and dismissed the suit, hence this Appeal.

5. The most important thing in this case, firstly, is that if during a certain period bills for minimum charges were issued, then the plaintiff has to show and prove the circumstances why actual reading of the meter could not be taken or was not taken, whether it was on account of anything done by

the defendant or on account of lapses of the plaintiff. Secondly, plaintiff has to prove the basis for minimum charges. Thirdly, the plaintiff has to prove how they calculated actual consumption of electricity by the defendant during the period for which bills for minimum charges were issued. The plaintiff has failed to prove all three things, satisfactorily.

6. I, repeatedly, specifically questioned the counsel for the appellants about these three aspects of the matter but she has no satisfactory answers or she could not throw any light on these three aspects. There is nothing on record to show that the reading of the meter could not be taken due to any attitude or behaviour of the defendant. There is no explanation therefore as to why the meter reading was not taken during all this period and why it was necessary to send average bills.

7. The appellant - plaintiff is a Corporation doing its business of supplying electricity and recovering charges from consumers. P.W. 1 Vasant merely stated from December 1993 to December 1995 the bills were not issued as per the reading, but he does not say that the reading could not be taken or was not taken. Then he has stated in paragraph 4 that new meter was installed in April 1994 and the

calculations were made from December 1993 to December 1995 on the basis of this replacement. From this evidence, it is absolutely clear that the defendant was charged for consumption of the electricity charges on the basis, which has no foundation, no rational and no factual basis.

8. It may happen in a given case when anybody from MSEB comes for meter reading the premises are closed and reading cannot be taken, in such a case the person visiting the premises or the establishment has to make a note and then on that basis average bill can be sent. But in the instant case it is a long period of 2 years from December 1993 to December 1995 and not a single man is examined by the plaintiff proving that during the period of these two years any person or more than one person ever visited the factory or establishment of the respondent, but they could not take the meter reading for a particular reason. Therefore, there is inherent lacuna in the case of the plaintiff on this aspect.

9. Secondly, there is absolutely no justification to make calculation regarding actual consumption after installation of new meter in April 1994. The trial court has rightly considered all the aspects and dismissed the suit. There is no

merit in this Appeal, the same is dismissed.

20.7.2005 (D.G. DESHPANDE, J.)